



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### TIDEWATER REGIONAL OFFICE

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## STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**Enterprise Leasing Co. of Norfolk/Richmond, LLC**

**VPDES Permit No. VAG775**

**Storm Water Registration No. VAG750061**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §62.1-44.15 between the State Water Control Board and Enterprise Leasing Co. of Norfolk/Richmond, LLC for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “Enterprise” means Enterprise Leasing Co. of Norfolk/Richmond, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Enterprise is a “person” within the meaning of Va. Code §62.1-44.3.
9. “Facility” means Enterprise’s Enterprise Rent-A-Car facility located at 1636 South Military Highway in Chesapeake, Virginia, from which discharges of wastewater associated with vehicle washing occur.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
12. “Permit” means VPDES General Permit No. VAG775, which was issued under the State Water Control Law and the Regulation on October 16, 2012 and which expires on October 15, 2017.
13. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to

cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

15. “Regulation” means the General Permit for Vehicle Wash Facilities and Laundry Facilities, 9 VAC 25-194-10, *et seq.*
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “Total Daily Maximum Load” or “TMDL” means The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources and natural background, plus a margin of safety (MOS). TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measures that relate to a state's water quality standard.
19. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Enterprise owns and operates the Facility at 1636 South Military Highway in Chesapeake, Virginia, which discharges wastewater associated with vehicle washing operations.
2. The Permit allows Enterprise to discharge wastewater associated with vehicle washing operations from the Facility to the riverine portion of the Eastern Branch of the Elizabeth River (Indian River), in strict compliance with the terms and conditions of the Permit.
3. The Eastern Branch of the Elizabeth River (Indian River) is located in the James River Basin. The Eastern Branch of the Elizabeth River (Indian River) is listed in DEQ’s 305(b) report as impaired for aquatic life use based on dissolved oxygen concentrations that are below the minimum criteria and the failure to meet a statistical evaluation constituting an un-impacted benthic organism population, recreation due to exceedance of enterococcus bacteria and fish consumption due to Polychlorinated Biphenyls in fish

- tissue. Industrial point source discharges are listed among the potential sources of the impairments.
4. During a DEQ Facility inspection on April 13, 2015 and subsequent file review, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
    - a. A discharge was observed at a curb inlet on the north side of the Facility which is not a permitted outfall.
    - b. Weekly inspections logs had not been updated since September 2014.
    - c. Solids observed in the gutter guarded curb inlet that discharges to the permitted outfall had not been cleaned up and properly disposed.
    - d. A record of notification to the City of Chesapeake for discharges to the Municipal Separate Storm Sewer System ("MS4") was not observed in the Facility record.
    - e. The Operation & Maintenance Manual did not include information regarding the disposal of solids, had not been updated annually and was not signed.
    - f. A response to the April 3, 2015 inspection due within 20 days of receipt had not been provided as requested.
  5. Part I.A of the Permit prohibits unpermitted discharges to state waters.
  6. Part I.B.1 of the Permit requires weekly inspections to be documented in an operational log.
  7. Part I.B.6.b of the Permit requires all solids to be handled, stored, and disposed to prevent a discharge to state waters.
  8. Part I.B.9 of the Permit requires notification to the owner of a MS4 of the existence of a discharge to its system.
  9. Part I.B.12 of the Permit requires the Operations & Maintenance Manual to include a sludge/solids disposal plan, updated at least annually and signed and certified.
  10. Part II.D of the Permit requires any information which the Board may require to determine compliance with the Permit to be provided upon request.
  11. On September 22, 2015, TRO issued NOV No. W2015-09-T-0002 to Enterprise for the violations noted in paragraphs C(4) through C(10), above.
  12. On September 30, 2015, Enterprise submitted a letter indicating that it had removed and disposed of solids observed in the gutter, notified the City of Chesapeake of the discharge to its MS4, updated and signed the Operation & Maintenance Manual, planned to replace a gutter guard to ensure it only discharges through its permitted outfall and planned to modify its training of management staff to include wastewater regulatory information.

13. On November 2, 2015, DEQ staff met with Enterprise representatives to discuss the NOV.
14. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
15. The Regulation, at 9 VAC 25-194-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
17. The Department has issued coverage under no permits or certificates to Enterprise other than under VPDES Permit No. VAG775.
18. The Eastern Branch of the Elizabeth River (Indian River) is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
19. Based on the results of the April 13, 2015 inspection, the letter submitted by Enterprise on September 30, 2015 and the November 2, 2015 meeting, the Board concludes that Enterprise has violated the Code, the Regulation and Part I.A, Part 1.B.1, Part I.B.6.b, Part I.B.9, Part I.B.12 and Part II.D of the Permit, as described in paragraphs C(4) through C(10), above.
20. Enterprise has submitted documentation that verifies that the violations described in paragraphs C(4) and C(10), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Enterprise, and Enterprise agrees to pay a civil charge of \$5,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Enterprise shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this

Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Enterprise shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Enterprise, for good cause shown by Enterprise, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, Enterprise admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Enterprise consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Enterprise declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Enterprise to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Enterprise shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstance beyond its control and not due to a lack of good faith or diligence on its part. Enterprise shall demonstrate that such circumstances were beyond its control and not due to a lack of

good faith or diligence on its part. Enterprise shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Enterprise intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Enterprise. Nevertheless, Enterprise agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Enterprise has completed all of the requirements of the Order;
  - b. Enterprise petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Enterprise.


Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Enterprise from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Enterprise and approved by the Department pursuant to this Order are incorporated into

this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Enterprise certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Enterprise to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Enterprise.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Enterprise voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of May, 2016.

  
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Regional Director  
Department of Environmental Quality



Enterprise Leasing Co. of Norfolk/Richmond, LLC voluntarily agrees to the issuance of this Order.

Date: 4/15/16 By: [Signature]

Enterprise Leasing Co. of Norfolk/Richmond, LLC.

Commonwealth of Virginia

City/County of James City

The foregoing document was signed and acknowledged before me this 15 day of  
April, 2016, by Kyle Ellis who is  
Operations Manager of Enterprise Leasing Co. of Norfolk/Richmond, LLC, on behalf  
of the company.

[Signature]  
Notary Public  
7648849  
Registration No.

My commission expires: 10-31-19

Notary seal:

